

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JESUS CORTEZ,

Petitioner,

Civil No. 2:22-cv-12234

Honorable Paul D. Borman

v.

JONATHAN HEMINGWAY and
FEDERAL BUREAU OF PRISONS,

Respondents.

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**OPINION AND ORDER GRANTING PETITIONER'S MOTION FOR
RECONSIDERATION (ECF No. 6)**

On January 31, 2023, the Court dismissed Petitioner Jesus Cortez's *pro se* petition for a writ of habeas corpus filed under 28 U.S.C. § 2241 because he failed to comply with the Court's deficiency order requiring him to submit a \$ 5.00 fee for filing a habeas corpus petition or an application to proceed *in forma pauperis* within twenty-one days of the order. (ECF Nos. 4, 5.) Petitioner now asserts that he attempted to pay the \$ 5.00 filing fee when he initiated the habeas corpus action, but

the fee was never received by the Court. For the reasons that follow, the motion for reconsideration is **GRANTED**.¹

On March 8, 2023, Petitioner filed his Motion for Reconsideration of the Court's January 31, 2023 Order, pursuant to Federal Rule of Civil Procedure 59(e). Motions to alter or amend judgment pursuant to Rule 59(e) may be granted only if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice. *GenCorp., Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). "Rule 59(e) permits a court to alter or amend a judgment, but it 'may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.'" *Exxon Shipping Co. v. Baker*, 554 U.S. 471, 485 n. 5 (2008) (citing 11 C. Wright & A. Miller, *Federal Practice and Procedure* § 2810.1 (2d ed. 1995)).

Petitioner alleges that on September 14, 2022, he requested that the Bureau of Prisons withdraw an amount of \$ 5.00 from his personal funds to be paid to this Court. Petitioner further alleges that he was not aware the Court had not received the fee. Petitioner's motion will be granted because the Court accepts his assertion that he attempted to comply with the Court's filing requirements, but for reasons

¹ Although Petitioner titles his pleading as a motion for reconsideration, it is evident that Petitioner intends the motion to be construed as a motion to alter or amend the judgment under Fed. R. Civ. P. 59(e).

beyond his control his \$ 5.00 filing fee was lost. Petitioner has since submitted the filing fee, which has been received by the Court. (ECF No. 7.)

Based upon the foregoing, **IT IS ORDERED** that the motion for reconsideration (ECF No. 6) is **GRANTED**.

IT IS FURTHER ORDERED that the case is reopened and reinstated to the Court's active docket.

IT IS SO ORDERED.

s/Paul D. Borman
PAUL D. BORMAN
United States District Judge

Dated: June 1, 2023